

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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**Commissioner for Patents  
Alexandria, VA 22313**

**RESPONSE TO OFFICE ACTION MAILED ON APRIL 30, 2009 AND CLAIM**

**AMENDMENTS**

**I. CLAIM REJECTIONS – 35 USC § 102**

In response to Examiner's rejection of claims 2, 12, 14, 31 - 32, and 34 - 46, which were rejected under 35 U.S.C. § 102(b), Applicants amend claim 31 to include the following: "causing said optical radiation to be commonly therapeutically effective in humans by employing a pre-established spectral composition that has been pre-identified as a maximally potent spectral composition in the regulation of human circadian physiology, said pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm". Applicant's note that the present invention teaches causing optical radiation to be commonly therapeutically effective in humans by employing a pre-established spectral composition that has been pre-identified as a maximally potent spectral composition in the regulation of human circadian physiology. In contrast, Searfoss et al. (5,265,598),

among other differences teaches employing a spectral composition that is individually determined based on subjective response of the specific human being treated. In addition, new claim 57, which depends from claim 31, further includes pre-identifying the pre-established spectral composition that has been pre-identified as a maximally potent spectral composition in the regulation of human circadian physiology. Claim 57 depends from a now allowable claim 31, and Applicants maintain that the added patent claim 57 will not require the Examiner to conduct a new and/or additional patent search.

Applicants further note that claims 2, 12, 14, 32, and 34 - 46 now depend from allowable claims. In addition, new claim 57 depends from claim 31, which is now an allowable claim.

Claims 35 - 38 now depend from allowable claims. It is noted that Searfoss et al. (5,265,598) does not teach a blue light filter or the 435 – 488 nm waveband. The only color Searfoss et al. (5,265,598) specifically identifies is “green” which is mentioned three times in the claims, once in the Summary and once in the Description. Searfoss et al. (5,265,598) identify no other colors in their application. Sakamoto et al. (5,648,653) does not teach a method of at least treating or preventing at least one light responsive disorder in at least one mammal.

#### **IV. AMENDMENTS**

Amend the claims as follows: